



June 18, 1996

Via Facsimile & U.S. Mail  
310/203-7199

Mr. Alan Abshez  
Irell & Manella LLP  
1800 Avenue of the Stars, Suite 900  
Los Angeles, CA 90067-4276

RE: **Feasibility Study for Escondido Beach Access/Mancuso Property**

Dear Mr. Abshez:

This is in response to your letter of June 6, 1996, Michael Fisher, and letters of June 13, 1996 to me and to Charles I. Rauw of Charles I. Rauw Consulting Engineers. Your correspondence alleges that your client Frank Mancuso's procedural due process rights have been violated, in that you contend Mr. Mancuso was not afforded notice or an opportunity to be heard with respect to the Conservancy's May 16, 1996 board meeting and authorization of the above-referenced feasibility study. Your correspondence also requests that the Conservancy refrain from taking any action in furtherance of the feasibility study authorized by the Conservancy Board on May 16, 1996.

It is our opinion that Ms. Susan McCabe repeatedly, both actually and constructively, represented to the Conservancy that she was Mr. Mancuso's agent. Ms. McCabe contacted Mr. Fisher in early 1994 and stated that she represented Mr. Mancuso concerning the Chiate/Wildman easement. Indeed, at this time she, along with Jonathan Horne, Mr. Wildman's representative, provided Mr. Fisher with a tour of the subject real property. Also, in September of 1994 Ms. McCabe and Mr. Horne toured the property with Conservancy staff Joan Cardellino and Brenda Buxton. In December 1995 Ms. McCabe and Mr. Horne attended a meeting at the Conservancy's offices where they proposed an access alternative to the Chiate/Wildman easement. Further, in February 1996 Ms. Buxton and Steve Horn, Deputy Executive Officer of the Conservancy, had several conversations with Ms. McCabe concerning the Chiate/Wildman easement. The following month, Ms. McCabe attended a public meeting concerning the easement, and also telephoned Brenda Buxton subsequent to the meeting to discuss the proposed alternative.

330 Broadway, 11th Floor  
San Francisco, California 94612-2530  
510/415-1015 Fax: 510/286-0470



Mr. Alan Abshez  
June 18, 1996  
Page 2

easement. Ms. McCabe has also received correspondence from the Conservancy on this matter, yet never notified the Conservancy that she was not Mr. Mancuso's agent.

Ms. McCabe's repeated contact with the Conservancy and attendance at meetings concerning the easement constitutes her repeated representation that she was acting as Mr. Mancuso's agent in this matter. Accordingly, the Conservancy reasonably believed Ms. McCabe to be acting as such. The Conservancy regrets any misunderstanding between Mr. Mancuso and Ms. McCabe as to her agency status, but was not duty bound to establish the exact nature of the relationship between these individuals.

Ms. McCabe's agent status notwithstanding, neither Mr. Mancuso or your firm ever requested to receive notice from the Conservancy with respect to the May 16, 1996 meeting, as required by law. Notice of the May 16, 1996 meeting was provided to all persons who requested, in writing (in accordance with California Government Code Section 11125(a)),<sup>1</sup> to be notified of the meeting. Furthermore, as a courtesy, Ms. Buxton provided Ms. McCabe with a facsimile of the staff recommendation describing the proposed feasibility study in early May 1996.

The Conservancy regrets Mr. Mancuso's election (perhaps unintended) to forego his opportunity to be heard at the May 16, 1996 meeting. However, the Conservancy asserts it is doing nothing wrong concerning its duty to provide proper notice of the meeting. Notwithstanding, as I mentioned during our telephone conversation of June 13, 1996, the Conservancy invites Mr. Mancuso to raise his concerns to the Conservancy in writing. The Conservancy also receives oral comments from the public at each of its meetings; the next two Conservancy meetings will be held June 22, 1996 in Sacramento and August 15, 1996 in San Francisco.

Your correspondence also states that Mr. Mancuso's property has been damaged by Conservancy agents. Assuming any such damage did occur, please elaborate on this statement if the extent of the damage warrants your taking the time to do so.

With respect to your June 6, 1996 Public Records Request Act inquiry, we have four filefolders, each approximately 2 inches thick. We suggest that you review the files for relevance and applicability prior to copying. Please let me know how you would

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<sup>1</sup> Your June 13, 1996 correspondence references Cal. Public Resources Code Section 31107.1 with respect to the Conservancy's notice procedure. Section 31107.1 pertains to "property transactions," that is acquisitions, exchanges, etc. The Conservancy's action on the Chiate/Wildman easement does not constitute a transaction as the Conservancy already owns the easement.



Mr. Alan Abshez  
June 18, 1996  
Page 3

like to handle the inspection and production of the documents.


As for your letter to Mr. Rauw, be aware that neither you or Mr. Mancuso have any authority to impede Mr. Rauw or Charles I. Rauw Consulting Engineers from the performance of any contractual obligation they may have concerning the feasibility study. Furthermore, you, on behalf of Mr. Mancuso, are instructed and requested to direct any communications to the Conservancy or its agents concerning this issue through this office until otherwise instructed. Any further unauthorized conduct will be considered tortious interference with the Conservancy's business relationship(s).

At this time, the Conservancy will continue working on the previously approved feasibility study. However, you have the Conservancy's assurance that no entry onto Mr. Mancuso's property will occur without his permission. Indeed, Mr. Mancuso currently blocks access to the Conservancy's easement from Highway One, and maintains structures which encroach upon the Conservancy's easement. These issues require resolution, which will be fully accomplished through negotiation rather than litigation. Any necessary entry onto Mr. Mancuso's property prior to resolution of these issues for purposes of the feasibility study will be described in writing and permission for entry will be sought.

The Conservancy urges you and your client to realize that work on feasibility studies, as opposed to actual construction, can be conducted largely off-site. Further realize that one potential outcome of a feasibility study is a lack of feasibility. Finally, realize that the concerns referenced in your correspondence can and should be raised at the time actual construction is considered for authorization. In short, your request for cessation of the study and threat of litigation lack merit and wisdom in that they are not ripe for judicial intervention, nor has Mr. Mancuso exhausted his administrative remedies. Keep in mind the prohibition on the filing of frivolous actions embodied in Code of Civil Procedure Section 128.5.

The Conservancy looks forward to hearing, adding and resolving the issues referenced in your correspondence in this letter. Please contact me with any questions.

Sincerely,

  
James Pierce  
Staff Counsel

Mr. Alan Abshez  
June 18, 1996  
Page 4

bcc: Michael Fisher  
Steve Horn  
Elena Eger  
Brenda Buxton  
Mark Beyeler  
Charles Rauw

CALIFORNIA STATE COASTAL CONSERVANCY

1330 BROADWAY, SUITE 1100  
OAKLAND, CA 94612-2530  
ATSS 541-1015  
TELEPHONE 510/286-1015  
FAX 510/286-0470



FAX: 510-286-0470  
FAX CALNET: 8-541-0470

DATE: 6/18/96

FAX NUMBER: 310/203-7199

TO: Alan Abshez  
Irell & Manella LLP

FROM: James Pierce

PHONE: 510-286- 1084

TOTAL NUMBER OF PAGES (including this page): 4

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REPLY REQUESTED: ☐ NO ☐ YES ☐ ASAP  
☐ FYI ☐ URGENT



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PETE WILSON, Governor

## CALIFORNIA STATE COASTAL CONSERVANCY

1330 BROADWAY, SUITE 1100  
OAKLAND, CA 94612-2530  
ATSS 541-1015  
TELEPHONE 510/286-1015  
FAX 510/286-0470



FAX: 510-286-0470  
FAX CALNET: 8-541-0470

DATE: 6/18/96FAX NUMBER: 310/203-7199TO: Alan AbshezIrell & Manella LLPFROM: James PierrePHONE: 510-286-1084